

OGC Has Reviewed

SEP 29 1954

MEMORANDUM FOR: General Counsel

SUBJECT: Employment of Retired Personnel as Consultants

1. This Office has just had called to its attention 28 Comp. Gen. 381, wherein it is stated

"The provisions just quoted (referring to Section 212 of the Economy Act) uniformly have been held by the accounting officers of the Government to apply to retired officers of the Army and the Navy, not otherwise excepted therefrom, who serve under the Federal Government in a temporary, part time, or intermittent status and who are paid upon a time basis. See 19 Comp. Gen. 391 and decisions cited therein. Also it has been held that such a retired officer, if employed solely in an advisory capacity - such as for consultation purposes only - and paid upon a fee basis for each such consultation, is not holding a 'civilian office or position' within the meaning of that phrase as used in the said section 212 and that by reason thereof such officer is not subject to the restrictions contained therein."

2. With very few exceptions, consultant contracts entered into between the Agency and retired personnel of all categories (military, Foreign Service, and regular civil service annuitants) have been on the basis of a stipulated sum of money "per day of service", as distinguished from a stipulated sum "for hours actually worked." Thus, the intent and practice has been to pay the stipulated sum for any day during which the consultant renders the service for which he was retained. It is of no consequence whether he is employed 1, 3, 5, 8, or more hours during the particular day - the sum paid is the same. Therefore, it appears to us that with the exception of those few individuals whose contracts specify "for hours actually worked" the Agency may properly view these consultants as being employed on a "fee" basis.

3. It is believed that for your Office to render an official opinion on this matter will serve to clear up a situation which has been somewhat confused during past years. Specifically, we would like for you to consider the application of the cited decision, or

any other decision known to you, to the three classes of retired personnel with which we deal. While we recognize that in many instances a legal determination might properly rest only upon a complete examination of all the facts in a particular case, a statement of overall guidance would be most helpful.

Harrison G. Reynolds
Assistant Director for Personnel

OAD/P emv (27 Sep 54)

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